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OFFICE OF PETITIONS

In re Application of
Jack V. Smith
Application No. 09/898,958
Filed: July 3, 2001
Title of Invention: **INFLATABLE BOX**

: DECISION ON PETITION

This is a decision on the renewed petition filed May 19, 2008 to revive the above-identified application, incorrectly titled under 37 CFR 1.47(a), but is treated under 37 CFR 1.137(b)¹.

The petition under 37 CFR 1.137 (b) is **GRANTED**.

The above-identified application became abandoned as a result of petitioner's failure to file a proper appeal brief. A Notification of Non-Compliant Appeal Brief (37 CFR 41.37) was mailed September 29, 2005 setting the longer of one month or 30 days for reply. No response having been filed, a Notice of Abandonment was mailed July 6, 2006. On November 13, 2007 a petition to revive was filed with a Request for Continued Examination (RCE) requesting that the previously filed amendment be used as the submission required under 37 CFR 1.114. As well, additional independent claims were submitted. However, the credit card used to pay the fees associated with the instant petition, RCE and independent claims was deficient by \$20. Since no authorizations for debiting a deposit account for any deficiencies had been granted, the petition was not grantable and a decision dismissing the petition was mailed February 28, 2008.

A renewed petition was filed March 25, 2008 noting that PTO Form 2038 was to be enclosed to pay the balance of the fees due however, no such form was found amongst the papers included with the renewed petition and therefore, the petition was dismissed in a decision mailed April 23, 2008.

¹ Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

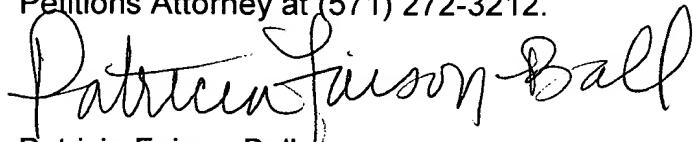
(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

For clarification of the record, this matter is not and never was considered under 37 CFR 1.47, and the fee deficiency was not for the petition fee under 37 CFR 1.137(b) but rather was for a deficiency in the payment of the independent claims.

The fee deficiency having been satisfied with the instant request for reconsideration, this matter is being referred to Technology Center 3728 for processing of the RCE filed November 13, 2007 and the previously filed amendment as the submission required under 37 CFR 1.114.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.



Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions